

Minutes from the seventh meeting of WeCAN held at Westfield City Hall Assembly Room on September 30, 2008 at 7 pm.

Disclaimer: I hope you will find these notes helpful. They are not a complete representation of the meeting, but rather the highlights of topics discussed. Feel free to contact me at Westfield City Services Building (317) 896-5452 if you have any questions. -TB

September 30, 2008

Agenda

- I. Announcements
- II. Legal Issues Facing Neighborhoods (Local HOA lawyer, Tom Murray)
- III. Westfield In Bloom (City of Westfield Parks Director, Melody Sweat)
- IV. Budget 2009 Presentation. (City of Westfield Project Analyst, Tammy Blackburn)
- V. Inquiry on Future Agenda Topics

I. Announcements

Solicitor's Permit Information

[Solicitor's Permit information](#) is available on the WeCAN site. Additional information will be presented at the next WeCAN meeting on October 28th.

Trash/Recycling Update

Bids for service are due on October 6. The bids will be opened at that time. Council will review the bids at the October 13 Council Meeting.

Survey of Neighborhood Hubs

The Westfield Fire Department and the Westfield Police Department need some information from you on the location of the neighborhood hub and the contact information of a few people that can access the site. The survey contains some guidelines to follow. Please fill out the [Neighborhood Hub Survey](#) that posted on the WeCAN site.

II. Legal Issues Facing Neighborhoods

Tom Murray of Eads Murray & Pugh, P.C. presented valuable information concerning many of the legal issues facing neighborhoods. Please see the [handout](#) posted on the WeCAN site. The following information is for general information only. It is not intended as specific legal advice. If you have further questions, you should contact your attorney.

Delinquencies

The delinquencies of HOA dues are rising as well as personal bankruptcies. When calling homeowners and simply asking them to pay or to find some way to work around unfortunate circumstances doesn't work, some HOAs should file suit in small claims court for the current payoff amount and any court and attorney fees associated with filing the lien. There is no minimum of notices that HOAs are required to file before suing. Many times, the mortgage company will issue a cross counter claim because chances are the household was delinquent in paying the mortgage as well as the dues. Garnishing wages is another option.

Foreclosures

Mortgage foreclosures are also on the rise. The chances of recovering the money from homeowners who are also probably filing for bankruptcy are very slim. The first mortgage company has priority over the property. When the Bank obtains a property, the property may be turned over to HUD if a FHA loans were involved. HUD is liable for assessments once they take possession but they don't necessarily pay fees or dues in a timely manner. They sometimes wait until the house is sold and then pay for the delinquencies accumulated.

Restrictiveness and Enforcement

Restrictiveness of covenants varies widely from neighborhood and is not necessarily representative of the size of the community. Enforcement of the covenants also varies. HOAs need to be careful on being lenient on some violations and hard on others. It might seem to a judge that the HOA is just trying to go after a particular homeowner if that is the case.

Other problems come from the differences in the developer running the association and after the developer leaves. Many times the Architectural Committee makes decisions either verbally or on paper that are against the covenants of the neighborhood. It is best to put at least one board member on the Architectural Committee so there can be collaboration on the issues that might arise. Once the Architectural Committee agrees that a resident can modify the property in a certain way, and that resident has spent a lot of money making the improvement, it would be hard to make the resident remove it. A common misconception is that the HOA does not begin until after the developer leaves. *In fact, the HOA usually begins long before the developer leaves.*

Precedents are not a clear cut issue. If a resident wants to make an improvement that is against the covenant but was approved in the past for a neighbor, the resident should have to apply as usual and if against the covenant, the improvement can be denied.

In the case of *many people violating the same covenant*, no basketball goals on the main drive for example, a letter should be sent to everyone in violation, making sure not to leave anyone out.

Grandfathering is another issue to consider. Restrictions that deal with large investments, such as saying that now no RVs are to be parked in the neighborhood and a resident just bought one, cannot easily be dismissed.

Is it possible to *recoup lawn care costs* for those in violation of the covenants? When addressing this issue, make sure the Association has the right to do the work and hold the owner responsible for the cost. Also be aware that the owner might call the police for trespassing. To deal with the trespassing issue, it would be safer to get an injunction from the court and take it with you while on the premises. If the covenant crosses with the city ordinances, you may want to consult the city.

HOAs are evenly split in how they deal with the *street restrictions*. About half have residents abide by the city ordinances in regard to the streets with enforcement by the city. The other half say that the residents must abide by the HOA covenants regarding the streets. The city only enforces the city ordinances, not the HOA requirements.

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Rental caps are varied. Putting a rental cap in place has been challenged as a fair housing violation but it did not hold up in court. Some cap at 15% others are higher or lower.

Make sure that the covenants make sense for the neighborhood and are not taken directly from another community.

Here are some local HOA Lawyers:

Tom Murray
536-2565

Bob Roache
823-0660

Scott Tanner
875-5600

III. Westfield in Bloom

City of Westfield Parks Director introduced Westfield in Bloom. The program would be part of America in Bloom (www.americainbloom.org). The program provides guidelines and educational materials. Each city that participates may compete nationally every other year and locally every year. Some possible categories are best small front yard, best large front yard, best front porch, best neighborhood entrance, and best business façade.

The kick-off meeting will be on Wednesday, October 29 at 7pm at the City Services Building (2706 E. 171st St) in the Main Level Media Room (Enter in through the new Customer Service Entrance). Please contact Melody Sweat at msweat@westfield.in.gov if you are interested, know people that are interested, or have any questions.

IV. 2009 Budget Presentation

Please see the [Budget Presentation](#) that is linked on the WeCAN site.

V. Inquiry of Future Topics

The next meeting will be October 28th at 7pm. We will not have meetings in November or December but will return in January 2009.

On October 28th the results of the Trash/Recycling Bid will be discussed. Also up for discussion will be the possibility of a smoking ban in Westfield. Mayor Cook has requested that communities discuss the issues and bring the thoughts to WeCAN. Please poll your community on the question on the following page and report the results back to the [WeCAN Smoking Ban Survey](#). For easiest comparison, you can set up the question just as I did using the site www.surveymonkey.com. The basic version is free, which is all you should need. Also be sure to include a comments/essay box for any additional thoughts on the issue.

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Smoking Ban Survey Question

Please indicate your preference on the following categories:

	Smoke Free	No Opinion	Smoking Should be Allowed
Most Workplaces	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Restaurants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Restaurants except for a portion that is completely closed off from the non-smoking portion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bars	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All Public Places	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All Public Facilities except those that serve only adults (bars, etc)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Recreation Facilities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Outside entrances to buildings designated as smoke free	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All enclosed spaces	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Everywhere except residential homes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you have questions/suggestions, please email Tammy at tblackburn@westfield.in.gov.

Thank you!